

## **Assembly Bill No. 1979**

### **CHAPTER 416**

An act to amend Sections 17173, 17199.3, and 17199.4 of, and to repeal Section 17193.5 of, the Education Code, relating to school facilities.

[Approved by Governor September 18, 2014. Filed with  
Secretary of State September 18, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1979, Nazarian. School facilities: California School Finance Authority: definitions.

(1) Existing law authorizes the California School Finance Authority to, among other things, determine the location and character of any project to be financed or refinanced under the California School Finance Authority Act. Existing law defines the term "project" as the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to the act.

This bill would provide that the term "project" may also include reimbursement for the costs of acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an education facility to be financed or refinanced pursuant to the act, provided that reimbursement from bond proceeds is required to comply with federal tax law in accordance with an opinion of counsel that supports special treatment under federal tax law, as specified.

(2) Existing law authorizes a public credit provider, as defined, to require a participating party, with regard to providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a participating party, to agree to specified conditions, including allowing the Controller to allocate specified school district, county office of education, or charter school apportionments to the public credit provider if the public credit provider is required to make principal or interest payments, or both, pursuant to the credit enhancement agreement.

This bill would delete this provision.

(3) Existing law limits the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act, other than up to \$4,000,000,000 in revenue bonds issued under a specified provision of that act, to \$400,000,000.

This bill would delete the distinction between the limits of the total amounts of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act and under the specified provision of the act. The bill would instead set the limit of the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the act at \$4,400,000,000.

(4) Existing law, the California School Finance Authority Act, authorizes a participating party, as defined, in connection with securing financing or refinancing of projects, as defined, to elect to guarantee or provide for payment of the bonds and related obligations in accordance with specified conditions.

This bill would generally revise and recast this provision of the act to authorize participating parties to provide for the funding of specified costs related to the issuance of the bonds, as well as the payment of the bonds, in accordance with prescribed requirements.

(5) This bill would incorporate additional changes to Section 17199.4 of the Education Code proposed by SB 971 that would become operative if this bill and SB 971 are both enacted on or before January 1, 2015, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17173 of the Education Code is amended to read: 17173. As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) “Act” means the California School Finance Authority Act.

(b) “Agent” means a county or city board of education or superintendent of schools acting with the board’s consent, on behalf of one or more school districts for any purpose of this chapter, the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges acting with the Board of Governors’ consent, on behalf of one or more community college districts for any purpose of this chapter, and the school district, county office of education, or other chartering entity acting with the consent of, and on behalf of, one or more charter schools for any purpose of this chapter.

(c) “Authority” means the California School Finance Authority, or any board, body, commission, department, or officer succeeding to the principal functions of the authority, or to which the powers conferred upon the authority by this chapter shall be given by law.

(d) “Bonds” or “revenue bonds” means bonds, notes, lease obligations, certificates of participation, commercial paper, and any other evidences of indebtedness.

(e) “Certificate of participation” means an undivided interest in one or more bonds, leases, loans, installment sales, or other agreements of a participating party or parties.

(f) “Charter school” means a school established pursuant to Part 26.8 (commencing with Section 47600) of Division 4 of Title 2.

(g) “Cost,” as applied to all or part of a project financed or refinanced pursuant to this chapter, means and includes all or any part of the cost of any of the following:

(1) Construction.

(2) Acquisition or improvement of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project.

(3) Demolition or removal of any buildings or structures on land acquired for a project, including the acquisition of any lands to which the buildings or structures may be moved.

(4) All machinery and equipment.

(5) Financing or refinancing charges, including, but not limited to, credit enhancement costs, and prepayment penalties.

(6) Interest before, during, and for a period following, the completion of any construction or improvement determined by the authority.

(7) Provisions for working capital.

(8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing or refinancing under this chapter.

(h) “Educational facility” means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools, including charter schools, or community colleges, including, but not limited to, all of the following:

(1) Classrooms.

(2) Auditoriums.

(3) Student centers.

(4) Administrative offices.

(5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(i) “Participating party” means:

(1) A school district, charter school, county office of education, or community college district that undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter.

(2) Any person, company, association, state or municipal government entity, partnership, firm, or other entity or group of entities that undertakes the financing or refinancing of a project pursuant to this chapter in conjunction with an entity described in paragraph (1).

(3) “Participating party” shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district, charter school, county office of education, or community college district for any purpose of this chapter.

(4) For purposes of subdivision (d) of Section 17183, subdivisions (a) and (b) of Section 17199.1, and Section 17199.4, “participating party” shall

be deemed to refer to an entity described in paragraph (1) in conjunction with which an entity described in paragraph (2), if any, applied for financing from the authority.

(j) “Project” means the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter. “Project” may include reimbursement for the costs of acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter, provided that reimbursement from bond proceeds is required to comply with federal tax law in accordance with an opinion of counsel that supports special treatment under federal tax law for the bonds issued for the applicable financing or refinancing. “Project” may include any combination of the foregoing undertaken jointly by any participating party with one or more other participating parties.

(k) “Working capital” means funds to be used by, or on behalf of, a participating party to pay maintenance or operating expenses, or any other costs that would be treated as an expense item under generally accepted accounting principles in connection with the ownership or operation of an educational facility, including, but not limited to, all of the following:

- (1) Reserves for maintenance or operating expenses.
- (2) Interest for a period not to exceed two years on any loan for working capital made pursuant to this chapter.
- (3) Reserves for debt service, and any other costs necessary or incidental to, financing pursuant to this chapter.
- (4) Payments made by a participating party for the rent or lease of an educational facility.

SEC. 2. Section 17193.5 of the Education Code is repealed.

SEC. 3. Section 17199.3 of the Education Code is amended to read:

17199.3. (a) The total amount of revenue bonds that may be issued and outstanding at any time for purposes of this chapter shall not exceed four billion four hundred million dollars (\$4,400,000,000).

(b) For purposes of subdivision (a) bonds that meet any of the following conditions shall not be deemed to be outstanding:

- (1) Bonds that have been refunded pursuant to Section 17188.
- (2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.
- (3) Bonds that have been issued to finance or refinance working capital.

SEC. 4. Section 17199.4 of the Education Code is amended to read:

17199.4. (a) Notwithstanding any other law, any participating party, in connection with securing financing or refinancing of projects, or working capital pursuant to this chapter, may, in accordance with this section, elect to provide for funding, in whole or in part, one or more of the following:

- (1) Payments on authority bonds.
- (2) Payments under credit enhancement or liquidity support agreements in connection with authority bonds.

(3) Amounts pledged or assigned under one or more pledges or assignments to pay authority bonds or obligations under these credit enhancement or liquidity support agreements.

(4) Payments to fund reserves available to pay any of the payments described in paragraphs (1), (2), and (3), exclusively until paid.

(5) Fees and charges contemplated by the instruments of the authority, trustees, tender agents, remarketing agents, credit enhancement and liquidity support providers, and service providers.

(6) Any other costs necessary or incidental to any financing or refinancing conducted under this chapter.

(b) The payments made pursuant to subdivision (a) may be in connection with a financing or refinancing benefiting the participating party itself, one or more other participating parties, or any combination thereof.

(c) To participate under this section, the participating party shall do all of the following:

(1) Elect to participate by an action of its governing board taken in compliance with the rules of that board.

(2) Provide written notice to the Controller, no later than the date of the issuance of the bonds or 60 days before the next payment, whichever is later, of all of the following:

(A) Its election to participate.

(B) A schedule of the payments subject to that election.

(C) The payee or payees of those payments, or the trustee or agent on their behalf to receive those payments.

(i) Payment delivery instructions, which may be by wire transfer or other method approved by the Controller.

(ii) If the method of payment delivery is wire transfer, the participating party shall complete and submit the appropriate authorization form as prescribed by the Controller.

(d) The participating party may amend, supplement, or restate the notice required pursuant to paragraph (2) of subdivision (c) for any reason, including, but not necessarily limited to, providing for new or increased payments. The participating party shall certify in the notice and in any amendment, supplement, or restatement of the notice that each and every payment reflected in the schedule is a payment described in subdivision (a) and the amounts scheduled do not exceed the actual or reasonably estimated payment obligations to be funded pursuant to this section. The participating party shall also represent in the notice that it is not submitting the notice for the purpose of accelerating a participating party's receipt of its apportionments. Nothing in this section prohibits transfer by the recipient of an apportionment under this section to the participating party submitting the notice of the excess apportionment above the amount needed to fund actual payments where the excess resulted from erroneous estimation of scheduled payments or otherwise.

(e) Upon receipt of the notice required by paragraph (2) of subdivision (c), the Controller shall make an apportionment to the indicated recipient

on the date, or during the period, shown in the schedule in accordance with the following:

(1) If the participating party requests transfers in full as scheduled, in the amount of the scheduled transfer or such lesser amount as is available from the sources indicated in subdivision (f).

(2) If the participating party does not request transfers in full as scheduled, in the amount of the anticipated deficiency for the purpose of making the required payment indicated in a written request of the participating party to the Controller and in the amount of the actual shortfall in payment indicated in a written request of the recipient or the participating party to the Controller or the lesser amount that is available from the sources indicated in subdivision (f).

(3) To the extent funds available for an apportionment are insufficient to pay the amount set forth in a schedule in any period, the Controller shall, if and as requested in the notice, reschedule the payment of all or a portion of the deficiency to a subsequent period.

(4) In making apportionments under this section, the Controller may rely conclusively and without liability on any notice or request delivered under this section, including any delivered prior to enactment of the act that adds this paragraph. The Controller may make, but is not obligated to make, apportionments not reflected on a notice or on an amended, supplemented, or restated notice delivered under this section that the Controller receives less than 20 days prior to when the apportionment would otherwise be required.

(f) The Controller shall make an apportionment under this section only from moneys designated for apportionment to the participating party delivering the notice, and only from one or more of the following:

(1) Any revenue limit apportionments to a school district or county office of education without regard to the specific funding source of the apportionment.

(2) Any charter school block grant apportionments to a charter school without regard to the specific funding source of the apportionment.

(3) Any charter school categorical block grant apportionments to a charter school without regard to the specific funding source of the apportionment.

(g) (1) The amount apportioned for a participating party pursuant to this section shall be deemed to be an allocation to the participating party, and shall be included in the computation of allocation, limit, entitlement, or apportionment for the participating party.

(2) The participating party and its creditors do not have a claim to funds apportioned or anticipated to be apportioned by the Controller pursuant to this section.

(h) (1) The authority may require participation under this section under the terms of any financing or refinancing under this chapter to provide for one or more of the payments described in paragraphs (1), (2), (3), and (4) of subdivision (a). The authority may impose limits on new participation under this section. The authority may require participating parties to apply to the authority for participation. If the authority limits participation under

this section, the authority shall consider each of the following priorities in making participation available:

(A) First priority shall be given to participating parties that apply for funding for instructional classroom space under this chapter.

(B) Second priority shall be given to participating parties that apply for funding of modernization of instructional classroom space under this chapter.

(C) Third priority shall be given to participating parties that apply for funding under this chapter for any other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1).

(i) This section shall not be construed to make the State of California liable for any payments within the meaning of Section 1 of Article XVI of the California Constitution.

(j) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(k) This section does not obligate the State of California to make available the sources of apportionment under subdivision (f) in any amount or at any time or, except as provided in this section, to fund any payment described in this section. The addition of this subdivision is intended solely to clarify existing law.

SEC. 4.5. Section 17199.4 of the Education Code is amended to read:

17199.4. (a) Notwithstanding any other law, any participating party, in connection with securing financing or refinancing of projects, or working capital pursuant to this chapter, may, in accordance with this section, elect to provide for funding, in whole or in part, one or more of the following:

(1) Payments on authority bonds.

(2) Payments under credit enhancement or liquidity support agreements in connection with authority bonds.

(3) Amounts pledged or assigned under one or more pledges or assignments to pay authority bonds or obligations under these credit enhancement or liquidity support agreements.

(4) Payments to fund reserves available to pay any of the payments described in paragraphs (1), (2), and (3), exclusively until paid.

(5) Fees and charges contemplated by the instruments of the authority, trustees, tender agents, remarketing agents, credit enhancement and liquidity support providers, and service providers.

(6) Any other costs necessary or incidental to any financing or refinancing conducted under this chapter.

(b) The payments made pursuant to subdivision (a) may be in connection with a financing or refinancing benefiting the participating party itself, one or more other participating parties, or any combination thereof.

(c) To participate under this section, the participating party shall do all of the following:

(1) Elect to participate by an action of its governing board taken in compliance with the rules of that board.

(2) Provide written notice to the Controller, no later than the date of the issuance of the bonds or 60 days before the next payment, whichever is later, of all of the following:

(A) Its election to participate.

(B) A schedule of the payments subject to that election.

(C) The payee or payees of those payments, or the trustee or agent on their behalf to receive those payments.

(i) Payment delivery instructions, which may be by wire transfer or other method approved by the Controller.

(ii) If the method of payment delivery is wire transfer, the participating party shall complete and submit the appropriate authorization form as prescribed by the Controller.

(d) The participating party may amend, supplement, or restate the notice required pursuant to paragraph (2) of subdivision (c) for any reason, including, but not necessarily limited to, providing for new or increased payments. The participating party shall certify in the notice and in any amendment, supplement, or restatement of the notice that each and every payment reflected in the schedule is a payment described in subdivision (a) and the amounts scheduled do not exceed the actual or reasonably estimated payment obligations to be funded pursuant to this section. The participating party shall also represent in the notice that it is not submitting the notice for the purpose of accelerating a participating party's receipt of its apportionments. Nothing in this section prohibits transfer by the recipient of an apportionment under this section to the participating party submitting the notice of the excess apportionment above the amount needed to fund actual payments where the excess resulted from erroneous estimation of scheduled payments or otherwise.

(e) Upon receipt of the notice required by paragraph (2) of subdivision (c), the Controller shall make an apportionment to the indicated recipient on the date, or during the period, shown in the schedule in accordance with the following:

(1) If the participating party requests transfers in full as scheduled, in the amount of the scheduled transfer or such lesser amount as is available from the sources indicated in subdivision (f).

(2) If the participating party does not request transfers in full as scheduled, in the amount of the anticipated deficiency for the purpose of making the required payment indicated in a written request of the participating party to the Controller and in the amount of the actual shortfall in payment indicated in a written request of the recipient or the participating party to the Controller



or the lesser amount that is available from the sources indicated in subdivision (f).

(3) To the extent funds available for an apportionment are insufficient to pay the amount set forth in a schedule in any period, the Controller shall, if and as requested in the notice, reschedule the payment of all or a portion of the deficiency to a subsequent period.

(4) In making apportionments under this section, the Controller may rely conclusively and without liability on any notice or request delivered under this section, including any delivered prior to enactment of the act that adds this paragraph. The Controller may make, but is not obligated to make, apportionments not reflected on a notice or on an amended, supplemented, or restated notice delivered under this section that the Controller receives less than 20 days prior to when the apportionment would otherwise be required.

(f) The Controller shall make an apportionment under this section only from moneys designated for apportionment to the participating party delivering the notice, and only from one or both of the following:

(1) Any funding apportioned for purposes of revenue limits or the local control funding formula pursuant to Section 42238.02, as implemented by Section 42238.03, to a school district or county office of education without regard to the specific funding source of the apportionment.

(2) Any funding apportioned for purposes of the charter school block grant or the local control funding formula pursuant to Section 42238.02, as implemented by Section 42238.03, to a charter school without regard to the specific funding source of the apportionment.

(g) (1) The amount apportioned for a participating party pursuant to this section shall be deemed to be an allocation to the participating party, and shall be included in the computation of allocation, limit, entitlement, or apportionment for the participating party.

(2) The participating party and its creditors do not have a claim to funds apportioned or anticipated to be apportioned by the Controller pursuant to this section.

(h) (1) The authority may require participation under this section under the terms of any financing or refinancing under this chapter to provide for one or more of the payments described in paragraphs (1), (2), (3), and (4) of subdivision (a). The authority may impose limits on new participation under this section. The authority may require participating parties to apply to the authority for participation. If the authority limits participation under this section, the authority shall consider each of the following priorities in making participation available:

(A) First priority shall be given to participating parties that apply for funding for instructional classroom space under this chapter.

(B) Second priority shall be given to participating parties that apply for funding of modernization of instructional classroom space under this chapter.

(C) Third priority shall be given to participating parties that apply for funding under this chapter for any other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1).

(i) This section shall not be construed to make the State of California liable for any payments within the meaning of Section 1 of Article XVI of the California Constitution.

(j) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(k) This section does not obligate the State of California to make available the sources of apportionment under subdivision (f) in any amount or at any time or, except as provided in this section, to fund any payment described in this section. The addition of this subdivision is intended solely to clarify existing law.

SEC. 5. Section 4.5 of this bill incorporates amendments to Section 17199.4 of the Education Code proposed by both this bill and Senate Bill 971. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 17199.4 of the Education Code, and (3) this bill is enacted after Senate Bill 971, in which case Section 4 of this bill shall not become operative.